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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	) **CASE NO. 13-CR-3046-CAB**
Plaintiff,	)
vs.	) **APPENDIX I**
WILLIAM RICHARD BAILEY,	) **DEFENDANT'S MOTION TO DISMISS INDICTMENT BASED ON FALSE EVIDENCE DELIBERATELY FABRICATED BY THE GOVERNMENT**
Defendant.	)

IRS COMPUTER PROCEDURES AND THEIR STRICT RULES

In describing the "duties" imposed upon the Commissioner of Internal Revenue by Congress, IRC § 7803(a)(2) (*Duties*) states: "The Commissioner shall have such duties and powers as the Secretary may prescribe, including the power to—(A) administer, manage, conduct, direct, and supervise the execution and application of the internal revenue laws . . ."

The Commissioner carries out his duties, in large part, through automated computer processes. "The Internal Revenue Service (IRS) maintains and processes most taxpayer accounts on the master file, which consists of separate files for various types of taxpayers, such as individuals, businesses, employee plans, and exempt organizations." United States General Accounting Office, *TAX ADMINISTRATION - Uses of and Problems with IRS's Non-Master File* at p. 1 (April 21, 1999) http://www.gao.gov/archive/1999/gg99042.pdf

Appendix I - IRS Computer Procedures And Their Strict Rules

1   Professor Bryan Camp[1], George H. Mahon Professor of Law at Texas Tech School of

2 Law, wrote a three-part article which appeared on the *Forbes PT* Internet site on April 13-15,

3 2015, titled *Eight Tax Myths – Lessons for Tax Week*. Myth #8 was titled *The IRS is Run by*

4 *Humans*:

5   Lots of folks work at the IRS. Even after five years of punitive budget cuts, the IRS still
         employs some 80,000 workers. It is true that the IRS budget is mostly spent on personnel
6   costs. It is true that the face of the IRS is human, currently the Commissioner John
         Koskinen, who appears as able a Commissioner as any since the redoubtable George S.
7   Boutwell held the position in 1862.

8   But *behind those employees*, behind that elfin face of Koskinen, *lies the heart of our tax*
         administration system: computers. The story of tax administration since WWII is the
9   story of increased reliance on automation, on computers. And *computers run on rules.*
         Strict rules. The basic job of the humans at the IRS is actually to prevent the abuse that
10   results from rigid application of rules.

11   The *myth that humans run the IRS*, *that the fiendishly complex Tax Code* (not IRS Code!)
         created by Congress *is administered by actual human beings*, obscures both what is good
12   and what is not good about the current state of tax administration.
         http://www.forbes.com/sites/procedurallytaxing/2015/04/15/eight-tax-myths-lessons-for-
13   tax-week-part-iii/2/ (italics added.)

14   Given this perspective of the actual computer-driven world of IRS procedures, Dr. Bailey

15 respectfully maintains that it is unrealistic to understand what the IRS *actually* does unless one is

16 willing to grapple with the computer hieroglyphics presented in the IRS transcripts which the

17 Government has provided. To understand them, the IRS has provided *Document 6209*,[2]

18 supplemented by the Internal Revenue Manual (IRM). "These transcripts are troves of

19

20 [1] Prof. Camp was introduced by Prof. Keith Fogg, of Vanderbilt Law School: *We welcome guest blogger*
    Bryan Camp. Bryan is the George H. Mahon Professor of Law at Texas Tech School of Law. Bryan is a
21 *prolific and engaging writer. We worked together at the Office of Chief Counsel, IRS for several years*
    where I had the pleasure of watching fellow bureaucrats react to his wonky writing. This is the first of a
22 *three part series dispelling common myths about taxes and the tax system. Perfect reading for the week*
    we perhaps think most about the American tax system. Keith
23   The Tax Code is a puzzle. Whether one views it as an engaging enigma or a ridiculous riddle,
    everyone has to deal with it and with the agency that administers it: the IRS. And an IRS letter in your
24 mailbox cannot help but bring feelings of dread, even if the contents turn out to be a refund check. It is
    not surprising then, to find more than a few myths about the income tax and the IRS in our popular and
25 political culture. Here are some of them.
    http://www.forbes.com/sites/procedurallytaxing/2015/04/13/eight-tax-myths-lessons-for-tax-week/
26   T. Keith Fogg is a Professor of Law and Director of the Federal Tax Clinic at Villanova Law
    School. He joined the Villanova Law School faculty in 2007 after working for over 30 years with the
27 Office of Chief Counsel, IRS. http://www.procedurallytaxing.com/about-keith-fogg/
    [2] The 2015 version is available at http://1.usa.gov/1MVE0NH ("**2015 Document 6209** is a reference
28 guide which contains ADP and IDRS data relative to various components of the IRS. It is updated
    annually.") ADP – Automated Data Processing; IDRS – Integrated Data Retrieval System.

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1   information, but they are also almost completely incomprehensible to one not skilled at

2   interpreting the various numerical codes they use." *Rosenbloom v. Comm'r*, T.C. Memo 2011-

3   140 (Holmes, J., referring to IRS transcripts).

4   This Appendix seeks to unravel the information encoded in computer language in these

5   transcripts so that this Court can discern how the Commissioner actually implements his

6   Congressional mandate primarily by execution of "strict rules" in the IRS computer systems.

7   **A. 1998 Assessment Decoded**

8   1. Dr. Bailey's IMF MCC Transcript-*Complete* (1998) contains this entry, dated April 21,

9   2008:

10   a. TC 300 04212008 3,742.00 . . . 29247-493-70001-8 . . . DC03.

11   b. See *WB-TAX-DOC-000095-000096*.

12   c. IMFOLT (Individual Master File On-Line) (1998) reflects the same entry, except

13   that DC03 is replaced by DISPOSAL-CD: 03. *WB-TAX-DOC-000088*.

14   d. TXMODA (1998) (same) *WB-TAX-DOC-000131*.

15   2. TC 300: "Assesses additional tax as a result of an Examination or Appeals Adjustment to

16   a tax module which contains a TC 150 transaction." *Document 6209* (2015) at p. 8A-13

17   http://www.irs.gov/pub/irs-utl/6209_Section8A_2015.pdf

18   3. Note that the "Adjustment" is made "to a tax module which contains a TC 150

19   transaction," the computer code for an "Original Return."[3]

20   4. No adjustment transaction can be made by the Examination Division of IRS unless a

21   return has been posted to Master File. See IRM **3.12.179.14.1 (01-01-2014)** ("**All Doc**

22   **Code 47 (Exam) and most Doc Code 54 (DP) Adjustment transactions require a**

23   **return be posted**.")" (Bold in original.) http://www.irs.gov/irm/part3/irm_03-012-179r-

24   cont01.html#d0e4395

25   5. 3,742.00 is the dollar-amount of the additional assessment proposed by Examination as a

26   result of the deficiency proceedings.

27

28   [3] TC 150: "A tax liability assessed from the original return establishes a tax module." *Document 6209* at
     p. 8A-8 http://www.irs.gov/pub/irs-utl/6209_Section8A_2015.pdf

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6. "29" (in the DLN) stands for IRS Ogden, Utah Campus. See *Document 6209* (2015) at pp. 4-2, 4-10 ("File Location Codes are the first and second digits of the DLN. . . . Ogden Campus – 29").

7. "47" is the Document Code – "47" is "Examination Adjustment." *Document 6209* at p. 4-2 http://www.irs.gov/pub/irs-utl/6209_Section4_2015.pdf

8. "493" is the Julian calendar date. "The sixth, seventh and eighth digits represent the control (Julian) date." *Id*.

9. "700" is the "Blocking Series." "The ninth, tenth and eleventh digits represents the Blocking Series." *Id*.

10. **"**01" – "The twelfth and thirteenth digits are the serial numbers. The maximum number of records within a block is 100 and they are serially numbered from 00 thru 99." *Document 6209* (2015) at p. 4-2, *supra*.

11. "8" – "The fourteenth digit is the last year digit of the year the DLN was assigned. This digit is computer generated." *Id*.

12. Decoding the DLN reveals that the proposed additional $3,742.00 assessment was done as a result of the Examination Adjustment performed by the Examination Division as part of the deficiency proceedings for tax year 1998.

13. In the table below the bold heading, **MF and NMF Sorting and Blocking Series for Document Code 47 Adjustments**," we find that Blocking Series "700" is used to indicate an "Original/Electronic print" return. *Document 6209* (2015) at p. 12-12.[4] http://www.irs.gov/pub/irs-utl/6209_Section12_2015.pdf

14. An Asterisk note to Blocking Series 700 instructs the IRS employee: "Use an original

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[4] At the heading for this section appears this note: For adjustments input prior to 1/1/209 see: http://mysbse.web.irs.gov/exam/mis/data/default.aspx and scroll down to "Blocking Series". (Reference: IRM 4.4.1, Exhibit 4.4.1-11) [end of note] *Document 6209* (2015), at p. 12-11. http://www.irs.gov/pub/irs-utl/6209_Section12_2015.pdf

The "mysebse.web.irs.gov" website is not available to Dr. Bailey. If the "700" Blocking Series in 2009 has a meaning which differs from the meaning in *Document 6209* (2015), he is unable to access said different meaning. If the Government claims that the meaning of "700" differs from the meaning stated herein, Dr. Bailey asks the Court to order the Government to produce the appropriate source document(s), website or other repository for his inspection of said source.

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return blocking series for cases in which the TC 150 is an SFR/Dummy TC 150."

15. In short, the proposed assessment was made as a result of an "Examination Adjustment" to the "Original Return" for 1998.

16. DISPOSAL-CD 03 appears on the three transcripts mentioned above and is described as: "**Agreed** — (03 is considered agreed on the AIMS tables) – Applies only to returns if an agreement is received prior to the issuance of a 30-day or 60-day letter." *Document 6209* (2015) at p. 12-13.

17. The "*Account Transcript*" (1998) provided by the Government shows "Form Number: 1040A." *WB-TAX-DOC-000059*.

    a. "210" in the DLN associated with SFR TC150 stands for Tax Class 2 (income tax) and Doc Code 10. *Document 6209* (2015), at p. 2-5, shows that Form 1040A is the only form which has both Tax Class 2 and Doc Code 10 associated with it. http://www.irs.gov/pub/irs-utl/6209_Section2_2015.pdf

B. 1998 Assessment Decoded Results:

18. From this, it is clear that the TC 300 additional tax assessed is based upon an Examination adjustment to an "Original Return."

19. When an individual doesn't file an income-tax return, the IRS uses what can be described as an override procedure.

20. See IRM **2.8.2.1 (01-01-2011) Master File Request — Command Code AM424**, which provides, in relevant part:

    a. TC424 is generated to the appropriate master-file, and an open AIMS record is established on AIMS under the specific TIN (Taxpayer Identification Number), File Source, MFT (Master File Tax Account Code), and Tax Period . . . The TC424 request is sent to master-file for a *"full" Tax Return record. If or when a TC 150 posts to Master File, a "full" record is sent back to AIMS* along with a Return Charge-Out document and labels to be generated if requested. Upon receipt of the full record, AIMS sends a TC420 back to Master File when it replaces the original 424. http://www.irs.gov/irm/part2/irm_02-008-002.html (italics added.)

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21. **Push Code 036**[5]: "Non-Filer: Will computer generate a substitute for return TC150 at Master File 2 cycles after input. — Will cause a TC 150 to post to Master File 1 cycle after input. Can delete using AM424D 30 days after input." *Document 6209* (2015), Section 12 – Examination, Push Codes, p. 12-16 http://www.irs.gov/pub/irs-utl/6209_Section12_2015.pdf

22. Note that Push Code 036 uses not one, but two variations of TC 150:

    a. The initial TC 150 is the computer-generated version of the code for an "Original Return." See *Document 6209* (2015) at p. 8A-8 ("**TC 150**: This TC 150 when posted to the Entity Transaction Section indicates the Master File Entity was created from the posting of the return.") http://www.irs.gov/pub/irs-utl/6209_Section8A_2015.pdf

    b. The second TC 150, as will be explained below, is designed to produce transcripts which reflect that an actual substitute for return (SFR) was created by IRS and somehow posted to Master File.

    c. See admission by IRS Counsel Erin Salel who stated, in her answer to Dr. Bailey's Petition to Tax Court: Respondent "[a]dmits that a return under I.R.C. section 6020(b) was created for the Petitioner." Tax Court File, *WB-TAX-CT-FILE-000030* at p. 1, ¶ 1.

    d. IRC § 6214 (*Determinations by Tax Court*) defines the Tax Court's jurisdiction to determine tax deficiencies: "the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency . . ."

    e. IRC § 6211 (*Definition of a deficiency*) defines a "deficiency" with reference to "the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer . . ."

    f. Recall, again, that a *return by the taxpayer* must be posted on Master File in order for a deficiency to take place in the Examination Division.

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[5] Push Code 036 appears on the 1998 TXMODA at WB-TAX-DOC-000131, dated 02232005, and is associated with TC 424R (a TC 424 Reversed).

g. See IRM **3.12.179.14.1 (01-01-2014) ("All Doc Code 47 (Exam) and most**

Doc Code 54 (DP) Adjustment transactions require a return be posted.")"

(Bold in original.) http://www.irs.gov/irm/part3/irm_03-012-179r-

cont01.html#d0e4395

23. The "Adjustment" done by Exam was done to the Form 1040A return reflected on Dr.

Bailey's IRS transcripts.

C. Jurisdiction of Tax Court Requires a Deficiency Determined from a Return

24. A deficiency must be created in reference to a return of some kind, either the taxpayer's

or the IRS's. IRC § 6211 (deficiency determined as to a return.)

25. To satisfy this requirement, the IRS Counsel reported to the Tax Court that IRS had

created a return under IRC § 6020(b).

D. Push Code 036 Posts TC 150 Instead of SFR TC 150 because No TC Exists for SFR

26. Why is it necessary for Push Code 036 to *post* TC 150 before it *generates* SFR TC150?

Because neither Document 6209 nor any other IRS document, manual or authoritative

source of which Dr. Bailey is aware provides a computer or transaction code by which to

post SFR TC 150 to the Master File.

27. "Transaction Codes (TC) consist of three digits. They are used to identify a transaction
being processed and to maintain a history of actions posted to a taxpayer's account on the
Master File. Every transaction processed by ADP must contain a Transaction Code to
maintain Accounting Controls of debits and credits, to cause the computer at ECC to post
the transaction on the Master File, to permit compilation of reports, and to identify the
transaction when a transcript is extracted from the Master File." *Document 6209* (2015)
at p. 8A-1. http://www.irs.gov/pub/irs-utl/6209_Section8A_2015.pdf

a. The "history of actions posted to a taxpayer's account on the Master File" is

particularly critical, here, because Dr. Bailey claims that it contains exculpatory

data which shows that the IRS has manipulated the actions posted to his account

on the Master File so as to cause the transcripts to reflect false evidence

deliberately fabricated by such computer manipulation.

b. Moreover, that history will provide proof or lack of proof of compliance with

procedures required under the official records exception to the hearsay rule.

28. **Digit**: "a written symbol for any of the numbers 0 to 9." http://www.merriam-

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1   webster.com/dictionary/digit

2   29. IRM **4.12.1.8.1 (10-05-2010)** *SFR TC 150* instructs: "Do not submit a delinquent or

3   substitute return if TC 150 has posted or a SFR TC 150 has posted."

4   http://www.irs.gov/irm/part4/irm_04-012-001.html#d0e10

5   30. From this, it is apparent that Push Code 036 could not "submit a . . . substitute return"

6   because TC 150 had already posted in the first cycle.

7   31. Yet, Dr. Bailey's 1998 transcripts clearly reflect the presence of SFR TC 150.

8   32. The most probable explanation for this anomaly is that Push Code 036 "generated" the

9   letters "SFR" which were then appended to the already-posted TC 150.

10   33. Evidence of the actual operation of the computer program and history of transactions

11   posted to a taxpayer's account on the Master File will clarify this point.

12   **E.   Exam cannot Determine a Deficiency unless a Return is Posted to Master File**

13   34. In reference to the TC 424, above, the sequence reflected in Dr. Bailey's 1998 transcripts

14   is as follows:

15   a.   Push Code 036 and TC 424 appear to have been posted to Master File on or

16   about Feb. 23, 2005.[6] Discovery of the Source Code and history of actions posted

17   to a taxpayer's account on the Master File would reveal the correct date.

18   b.   Push Code 036 likely posted TC 150 to Master File on this same date.

19   c.   A few days later, March 3, 2005, TC 420 appears on both IMF-Complete and

20   TXMODA. *WB-TAX-DOC-000095, 131*.

21   d.   This means that Master File sent a "full tax return record" to AIMS[7] after Push

22   Code 036 posted TC 150 to Master File. See TC 424 description above. ("The

23   TC424 request is sent to master-file for a *"full" Tax Return record. If or when a*

24   *TC 150 posts to Master File, a "full" record is sent back to AIMS*.") (Italics

25

26   [6] IRM **4.4.9.6.2 (05-08-2012) Generating an SFR:** If no TC 150 is posted on the module, a substitute for
return can be computer generated . . . by using a Push Code 036 on ERCS, or inputting a TC 424 with a
27   Push Code 036 for non-ERCS users. http://www.irs.gov/irm/part4/irm 04-004-009-cont01.html
[7] "**AIMS**, the Audit Information Management System is a computer system used by Appeals,
28   Examination . . ." IRM **4.4.1.2 (05-19-2009) Description of AIMS** http://www.irs.gov/irm/part4/irm_04-
004-001.html#d0e29

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1   added.)

2   e.   AIMS now sends back to Master File TC 420.[8]

3   **Short recap**: After Push Code 036 posts TC 150 to it, Master File sends the "full tax

4   return record" to AIMS, and AIMS acknowledges that it has received the record by sending back

5   to Master File a TC 420. Think of TC 420 as an entry, similar to an entry in a library system,

6   when a book is checked out; the library keeps a record of who has the book, so as to be able to

7   know the location of the book. TC 420 is a record of where the "Original Return" is located. See

8   *Document 6209* (2015) at p. 8A-16 http://www.irs.gov/pub/irs-utl/6209_Section8A_2015.pdf

9   f.   Eleven days later, March 14, 2005, SFR TC 150 was *generated* by the AIMS

10   computer system. However, the SFR TC150 is, in fact, the second time TC 150

11   appears in the description of Push Code 036.

12   **F.   Why does TC 150 Never Appear on 1998 Transcripts?**

13   35. The important question at this point is: What happened to the initial TC 150 posted by

14   Push Code 036 on or about February 23, 2005?

15   a.   If it remains posted to Master File, then Push Code 036 cannot request or post an

16   SFR to Master File. "Check Master File to ensure no TC 150 is posted. An SFR

17   cannot be requested if a TC 150 is posted." IRM **4.4.9.6.2.1 (05-08-2012)**

18   *Research* http://www.irs.gov/irm/part4/irm_04-004-009-cont01.html

19   b.   If the initial TC 150 has been deleted from Master File, that would raise

20   additional problems:

21   i.   As noted, there is no computer code or transaction code of which Dr.

22   Bailey is aware which allows SFR TC 150 to be posted to Master File.

23   Yet, the 1998 transcripts clearly reflect that SFR TC 150 appears on

24   Master File. If SFR TC 150 could post to Master File, why would Push

25   Code 036 need to use a lone TC 150?

26

27

28   [8] TC 420: Computer generated at SC when opening record is posted. . . . Indicates that return has been referred to the Examination or Appeals Division. *Document 6209* at p. 8A-16 http://www.irs.gov/pub/irs-utl/6209_Section8A_2015.pdf

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ii. Because "SFR TC150" itself cannot be *posted* to Master File and because it is generated after the "full income tax record" has arrived at AIMS, it is highly probable that Push Code 036 *generated* the SFR TC150 while Dr. Bailey's "full tax return record" was at AIMS, modified that record by appending the letters "SFR" to the TC 150 and thereafter returned the "full income tax record" to Master File on March 14, 2005, with the letters "SFR" appended to the original TC 150.

iii. **Probable result**: The initial TC 150 ("Original Return") is simply now modified by the presence of the 3 letters "SFR".

iv. The initial TC 150 ("Original Return") is made to appear on the transcripts printed from Master File as an SFR TC 150.

c. This appears to be the purpose of Push Code 036's override or workaround function, namely, to change TC 150 from reflecting an "original return" to reflect an "SFR."

G. TC 150 Is an SFR in some Transcripts and an Original Return in Others

36. The SFR TC150, which an evidentiary hearing may well reveal to actually consist of the initial TC 150 ("Original Return") now modified by the generated letters "SFR", undergoes a computer metamorphosis into what is identified by both Blocking Series 700 with Disposal Code 03 and the *Account Transcript* as an "Original Return" Form 1040A agreed to by Dr. Bailey.

37. The following is the result:

a. the initial TC 150 ("Original Return") is first hidden from view on all transcripts;

b. it is then "tagged" with the generated letters "SFR";

c. it is then made to reflect that an IRC § 6020(b) return was created, despite the fact that the SFR is probably associated with the "Original Return" TC 150.

d. In other words, TC 150 begins as an "Original Return," then is made to appear as an SFR TC 150, and, finally, with the Blocking Series 700, is once, again, coded as an "Original Return" *agreed* to by Dr. Bailey.

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38. This allows the following:

    a. To the courts, it appears that the deficiency and assessment proceedings transpired via an SFR under IRC § 6020(b).

    b. Whereas, measured by the strict computer rules, the assessment was justified, because Dr. Bailey appears to have agreed to the income-tax liability.

    c. Discovery of the Revenue Officer Training Manual materials will confirm that no Delegation Order permits any IRS employee or computer system to create IRC § 6020(b) tax returns, whether Form 1040A or otherwise, for individuals who do not file income-tax returns.

    d. Indeed, as shown, no IRS employee or computer system has done so. Yet, the IRS transcripts reflect that an SFR was created under IRC § 6020(b).

H. Department of Justice Fosters Deception in the Courts

39. The Department of Justice (DOJ) has expressed its views in the courts:

"The IRS maintains a computerized Master File for each taxpayer. *Hazel v. Commissioner*, 95 T.C.M. (CCH) 1528 2008 WL 2095614, at *3 (2008); accord, *Wheeler v. Commissioner*, 446 F.App'x 951, 953 (10th Cir. 2011). An IRS individual master file (IMF) is opened by the filing of a tax return. *Ibid.* Under IRC § 6020(b)(1), "[i]f any person fails to make any return required by any internal revenue law . . ., the Secretary shall make such return." 26 U.S.C. § 6020(b)(1). In such cases, the master file is opened by the entry SFR, meaning substitute for return. *Hazel*, 2008 WL 2095614, at *3; accord, *Wheeler*, 446 F.App'x at 953."

Ellis v. Commissioner, No. 1:14-cv-00471 (D.D.C. June 2, 2014) *Memorandum of United States in Support of Motion to Dismiss* at 5 (on appeal as *Ellis v. CIR*, No. 15-5035 (D.C. Cir.)).

40. If TC 424 with Push Code 036 operates as herein described, it is simply impossible for "entry SFR" to open the Master File, as described.

41. "Entry SFR" is not a "transaction code," it does not "consist of three digits," and the operation of Push Code 036 requires that TC 150 ("Original Return") post to Master File first, followed by Master File sending the "full tax return record" to AIMS, which then sends TC 420 (the "library checkout card") back to Master File.

42. Only then does AIMS generate an SFR TC150, long after (in computer-time) TC 150, not SFR TC150, opened the Master File. SFR is merely an "indicator." See Dr. Bailey's 1998

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IMFOLT Transcript – *WB-TAX-DOC-000088*.

43. The DOJ actively seeks to keep from the courts any adversarial inquiry as to the actual operation of the IRS computer system from the courts:

> Computer data evidence is often introduced in tax cases to show the defendant's filing history, to prove that the defendant did not file returns as required, or to show that the defendant received notices about his tax liabilities. The introduction of the actual Individual Master File (IMF) transcript of account through a witness can open the witness to cross-examination by the defense about every code and data item contained in the transcript. In order to avoid this problem, it may be wiser to offer IRS computer records at trial in the form of Certificates of Assessments and Payments (IRS Forms 4340) or Certificate of Lack of Record (IRS Forms 3050), which are certified documents that summarize specific information regarding a taxpayer's filings and payment history. *Criminal Tax Manual, 40.03[9][c] Admissibility of IRS Computer Records*. http://www.justice.gov/sites/default/files/tax/legacy/2012/12/05/CTM%20Chapter%2040 .pdf

I.   Taxpayer's Attestation of Tax Liability Permits IRS to Summarily Assess Taxes

44. The Assistant Chief Counsel (Income Tax & Accounting) addressed the need for the taxpayer's consent or agreement in a *Memorandum* at 3 (July 29, 1998):

> [T]he penalties of perjury statement has important significance in our tax system. The statement connects the taxpayer's *attestation of tax liability* (by the signing of the statement) with the Service's statutory ability to summarily assess the tax. (Italics added.) http://www.irs.gov/pub/irs-wd/1998-053.pdf

J.   Interim Summary of the False IRS-Fabricated Evidence

45. In 1998, Dr. Bailey did not file a return either voluntarily or by way of *consent* to the IRS's preparation of a return under IRC § 6020(a)[9].

46. The evidence decoded from the transcripts supports the conclusion that the TC 150 posted on Master File by Push Code 036 represented an "original return" Form 1040A prepared by the IRS under IRC § 6020(a) and agreed to by him.

47. However, by manipulation of the IRS computer systems, Dr. Bailey's 1998 transcripts were falsely made to reflect that the "full tax return record" sent by Master File to Examination was an "SFR record" and that the SFR was created under the purported

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[9] "If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall *consent* to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary *as the return of such person*." IRC § 6020(a) (italics added)

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1   authority of IRC § 6020(b).[10]

2   48. A return, whether by the taxpayer or by IRS is a *sine qua non* for income taxes. See IRM

3   **3.12.179.14.1 (01-01-2014)** ("**All Doc Code 47 (Exam) and most Doc Code 54 (DP)**

4   **Adjustment transactions require a return be posted**.")" (Bold in original.)

5   http://www.irs.gov/irm/part3/irm_03-012-179r-cont01.html#d0e4395

6   49. The evidence adduced from the 1998 encoded transcripts supports the finding that the

7   deficiency "adjustment transactions" by Examination were made to an "original return"

8   Form 1040A prepared by the IRS with the consent of Dr. Bailey under IRC § 6020(a) –

9   the TC 150 posted by Push Code 036 – not to an SFR created under § 6020(b).

10 50. If an evidentiary hearing validates this finding, the inescapable conclusion would be that

11   the IRS never actually created an SFR for 1998 and that the transcripts that reflect that an

12   SFR was created have been intentionally falsified as part of a false-return scheme.

13 51. Despite the apparent efforts to override the strict rules of the computer system in an effort

14   to falsify the transcripts, the TC 300 tax assessment DLN (Document Locator Number)

15   also reflects that the assessment was actually based upon an Original Return Form 1040A

16   prepared by IRS and agreed to by Dr. Bailey.

17 52. The only authority for IRS to prepare a return agreed to by Dr. Bailey is to be found in

18   IRC § 6020(a).

19 53. Dr. Bailey neither filed a return nor did he agree to IRS's preparing a return for him

20   under IRC § 6020(a).

21 54. The decoded transcripts do not support a finding that an SFR was either created or posted

22   to Master File.

23 55. Yet, as noted, IRS Counsel informed Tax Court that an SFR under IRC § 6020(b) had

24   been created for Dr. Bailey.

25 56. There appears to be no means by which the Master File and its strict rules would have

26

27 [10] "If any person *fails to make any return required* by any internal revenue law or regulation made
    thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return,
28 the Secretary shall make such return from his own knowledge and from such information as he can obtain
    through testimony or otherwise." IRC § 6020(b)

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1   allowed for the 1998 deficiency proceedings to take place unless a TC 150, representing a

2   Form 1040A original return prepared by IRS under § 6020(a) and agreed to by Dr.

3   Bailey, had posted to Master File.

4

5   Respectfully submitted,

6   Dated: 31 July 2015

7   *s/David M. Michael*
                                                              DAVID M,.MICHAEL

8
                                                              s/Scott W. Gross
9   SCOTT W. GROSS

10
                                                              Attorneys for Defendant
11   WILLIAM RICHARD BAILEY

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14
                        CERTIFICATE OF ELECTRONIC SERVICE
15

16   I hereby certify that, on 31 July 2015, I caused to be electronically filed the foregoing
     with the clerk of the court by using the CM/ECF system, which will send a notice of electronic
17   filing on all ECF-registered counsel by operation of the Court's electronic filing system. Parties
     may access this filing through the Court's system.
18

19   s/*David M.. Michael*_____
                                                              DAVID M. MICHAEL
20   Attorney for Defendant William Bailey

21   **CERTIFICATE OF SECOND ELECTRONIC SERVICE**

22
            I hereby certify that, on 3 August 2015, I caused to be electronically filed the foregoing
23   with the clerk of the court by using the CM/ECF system, which will send a notice of electronic
     filing on all ECF-registered counsel by operation of the Court's electronic filing system. Parties
24   may access this filing through the Court's system.

25

26   s/*David M.. Michael*_____
                                                              DAVID M. MICHAEL
27   Attorney for Defendant William Bailey

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